



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 23, 2003

H.R. 1561

United States Patent and Trademark Fee Modernization Act of 2003

As ordered reported by the House Committee on the Judiciary on July 9, 2003

SUMMARY

H.R. 1561 would increase the fees that the Patent and Trademark Office (PTO) collects for activities related to the processing and filing of patent and trademark applications. The bill also would grant the PTO permanent authority to collect and spend those fees. Under current law, the collection and spending of those fees is subject to provisions in appropriation acts.

CBO estimates that enacting the bill would result in a net decrease in direct spending of about \$58 million in 2004, about \$140 million over the 2004-2008 period, and about \$220 million over the 2004-2013 period.

Enacting H.R. 1561 also could reduce the future need for appropriated funds for the agency's operating expenses; however, in recent years, the net appropriation to the PTO (including offsetting collections from fees) has been negative. For example, in 2003 the net PTO appropriation is estimated to be -\$48 million.

H.R. 1561 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. H.R. 1561 would impose private-sector mandates as defined in UMRA on patent and trademark applicants. Based on information provided by the PTO, CBO expects that the direct costs of complying with those mandates would exceed the annual threshold established by UMRA (\$117 million in 2003, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1561 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CHANGES IN DIRECT SPENDING^a										
Reclassification of PTO Fees										
Estimated Budget Authority	-1.3	-1.4	-1.4	-1.5	-1.6	-1.7	-1.7	-1.8	-1.9	-2.0
Estimated Outlays	-1.3	-1.4	-1.4	-1.5	-1.6	-1.7	-1.7	-1.8	-1.9	-2.0
Increases in PTO Fees										
Under H.R. 1561										
Estimated Budget Authority	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.3	-0.3	-0.3
Estimated Outlays	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.3	-0.3	-0.3
Total PTO Fees										
Under H.R. 1561										
Estimated Budget Authority	-1.5	-1.6	-1.7	-1.7	-1.8	-1.9	-2.0	-2.1	-2.2	-2.3
Estimated Outlays	-1.5	-1.6	-1.7	-1.7	-1.8	-1.9	-2.0	-2.1	-2.2	-2.3
Spending of PTO Fees										
Estimated Budget Authority	1.5	1.6	1.7	1.7	1.8	1.9	2.0	2.1	2.2	2.3
Estimated Outlays	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.1	2.2
Net Changes in Direct Spending										
Under H.R. 1561										
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	-0.1	*	*	*	*	*	*	*	*	*

NOTES: * = Savings of less than \$50 million.

Details may not sum to totals due to rounding.

- a. Enactment of H.R. 1561 also could lead to changes in discretionary spending if the Congress chose to eliminate future appropriations to the PTO in annual appropriation acts. In recent years, net appropriations to the PTO have been negative because appropriation acts have limited the agency's spending to a level below annual fee collections.

BASIS OF ESTIMATE

Under current law, the PTO is authorized to collect fees for activities related to processing applications for patents and trademarks. The agency assesses and collects fees for a number of different activities, and the rate for each is set in law. The collection and spending of those fees are subject to provisions in annual appropriations acts, and the fees are recorded in the budget as offsets to the discretionary spending of the PTO. CBO estimates that the agency will collect a total of about \$1.2 billion in fees in 2003.

In general, those fee collections cover the PTO's operating expenses. However, the 2003 appropriation act for the PTO placed a limit on the amount of fee collections that the agency could spend. Of the estimated \$1.2 billion in fees that will be collected in 2003, the act allowed the PTO to spend \$1.1 billion. (The Congress also allowed the agency to spend \$167 million from fees collected in prior fiscal years, resulting in a gross appropriation for the PTO of \$1.2 billion and an estimated net appropriation of -\$48 million for 2003.)

Changes in Direct Spending

H.R. 1561 would have two effects on the PTO's collections. First, the bill would authorize the PTO to collect and spend the fees without further appropriation action. Because the PTO's collection and spending of fees would no longer be controlled by the availability of appropriated funds, the bill would make all of the fees available to the agency for spending. Second, the bill would restructure and, in many cases, increase the fee rates that the PTO charges for activities related to patent and trademark applications. For example, the bill would increase the fee the PTO charges for issuing an original patent (other than design or plant patents) from \$1,300 to \$1,400, and also would create a new fee for trademark applications that are filed electronically.

Based on historical experience, CBO estimates that the amount collected under the current PTO fee structure will increase by about 5 percent a year. After accounting for the increased fee rates under the bill, CBO estimates that PTO fees would increase by about 14 percent in 2004 compared to the fee rates that will apply under current law. CBO estimates that enacting the bill would increase fees collected by the PTO by \$192 million in 2004, about \$1 billion over the 2004-2008 period, and about \$2.3 billion over the 2004-2013 period.

CBO estimates that the PTO's collections under current law, together with the additional collections resulting from the increased fee rates under the bill, would be about \$1.5 billion in 2004, about \$8.3 billion over the 2004-2008 period, and about \$18.7 billion over the 2004-2013 period. Under the bill, spending would no longer be controlled by annual appropriations, so the total amount of fee collections in each year would be available for the agency to spend. CBO estimates that enacting the bill would increase direct spending by about \$1.4 billion in 2004, about \$8.1 billion over the 2004-2008 period, and about \$18.4 billion over the 2004-2013 period. Because this spending would be offset by fee collections, CBO estimates that the net decrease in direct spending under H.R. 1561 would be \$58 million in 2004, about \$140 million over the 2004-2008 period, and about \$220 million over the 2004-2013 period.

Spending Subject to Appropriation

The bill could eliminate potential discretionary savings resulting from the PTO collecting more fees than it spends. In 2003, for example, CBO expects that total fee collections will be about \$1.2 billion. For that year, the PTO's appropriation was about \$48 million less than those fee collections. Net discretionary spending for the PTO in 2004 and beyond depends on future appropriations acts.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1561 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 1561 would impose private-sector mandates as defined in UMRA on patent and trademark applicants. Patent and trademark fees are private-sector mandates because the federal government controls the trademark and patent systems and no reasonable alternatives to the systems exist. The bill would increase fees and establish new fees for certain patent and trademark services. At the same time, the bill would reduce certain filing fees for patents and fees for electronic applications to register trademarks. Based on information from the PTO, CBO estimates that the aggregate direct cost of those mandates would range from about \$190 million in 2004 to about \$225 million in 2008 and would exceed the annual threshold established by UMRA (\$117 million in 2003, adjusted annually for inflation) in each of the next five years.

ESTIMATE PREPARED BY:

Federal Costs: Melissa E. Zimmerman

Impact on State, Local, and Tribal Governments: Sarah Puro

Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Peter H. Fontaine

Deputy Assistant Director for Budget Analysis